

MAINE HUMAN RIGHTS COMMISSION 51 State House Station Augusta, Maine 04333-0074

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Complainant

v.

Respondent and Respondent (Auburn)

I. COMPLAINANT'S CHARGE:

Complainant, alleged that Respondents, Respondent and Respondent, told her that if she sold her trailer, she would have to move it out of the park, in retaliation for her having file a previous complaint of housing discrimination.

II. RESPONDENT'S ANSWER:

Respondents, Respondent and Respondent, denied the allegation of retaliation and said that he decides which trailers need to be moved if sold on a case-by-case basis.

III. JURISDICTIONAL DATA:

- 1) Date of alleged discrimination: April 15, 2009.
- 2) Date complaint filed with the Maine Human Rights Commission: May 13, 2009.
- 3) The Respondents are subject to the Maine Human Rights Act, the federal Fair Housing Act, as well as state and federal housing regulations.¹
- 4) (Attorneys) Respondent is represented by Perry Mason, Esq. Complainant is represented by Clarence Darrow, Esq.
- 5) Investigative methods used: A thorough review of the written materials provided by the parties, issues and resolution conference, interviews.

¹ The complaint is dual-filed with the U.S. Dept. of Housing and Urban Development, HUD No. 01-09-0370-8.

IV. DEVELOPMENT OF FACTS:

- 1) The parties and issues in this case are as follows:
 - a) The Complainant, has owned and occupied a trailer that is located on a lot in Lew-Burn Park since June 2004. In December 2006, she filed a complaint of housing discrimination against Respondents with the Maine Human Rights Commission and HUD because Respondents charged her a pet fee for her service animal. In April 2007, the dispute was resolved and the complaint was dismissed.
 - b) Respondent Respondent owns the Lew-Burn Park which consists of 15 mobile home/trailer lots. Respondent manages the Park.
 - c) On about April 15, 2007, Complainant told Respondent that she was planning to sell her trailer and move out of the Park. Respondent told her that if she sold the trailer, she would have to remove it from the Park.
 - d) Complainant alleges that this stipulation was retaliatory for her prior complaint of discrimination and that it caused her to lose the sale of her trailer.
 - e) Respondents allege that the decision about which trailers need to be moved if sold is made on a case-by-case basis and denied the allegation of retaliation.
- 2) The following concerns Complainant's attempt to sell her trailer:
 - a) (Complainant) She had a "for sale" sign on her trailer and Buyer came by two times to look at it. She called Respondent to let him know she had a buyer and was planning to move out. He said that her trailer was too old, which isn't true, and that if she sold the trailer, the trailer would have to be removed. When she told Buyer the trailer would have to be moved, he was no longer interested in buying it.
 - b) (Buyer, interviewed 6/11/09) He lives in an apartment and was looking for a house that was affordable. He saw the "for sale" sign on Complainant trailer and she offered it to him for \$14,000. He was ready to give her a \$2,000 deposit when she told him the trailer would have to be moved if he bought it. He doesn't own any land, so he was no longer interested in buying the trailer.
- 3) Respondents provided the following:
 - a) He decides which trailers can stay in the park after they are sold on a case-by-case basis.
 - b) Respondent wants to replace older homes with newer homes. He decided this around the first of this year.
 - c) No one other than Complainant has been asked to move a trailer out of the Park.

4) The parties provided the following about Complainant' trailer and other trailers in the Park:

Complainant' Trailer #10, made in about 1970:



(Complainant) It is one of the nicest in the Park. It is in very good condition inside and out. The only other trailer that is as nice as hers is #12.

(Respondent) He does not dispute that Complainant' trailer is one of the two nicest in the Park.

Trailer #4, made in 1955 or 1956:



(Complainant) The owner died in the summer of 2004. The Park Rules say that the trailer was supposed to be removed from the Park. Instead, the owner's daughter moved in.

(Park Rules, VI Sale of Homes in the Park, 6 Death) Should a resident who is the owner of a mobile home die, the tenancy will terminate and the mobile home must be removed

from the park by the deceased's estate within thirty (30) days. This requirement does not apply if there is a surviving joint tenant. ...

(Respondent) He can't remember what happened one way or the other.

Trailer #7:



(Complainant) This trailer is in far worse condition than hers.

(Respondent) At the beginning of this year, the owner of #7 abandoned it and he (Respondent) had to pay to remove it off-site.

Trailer #9, late 50's or early 60's:



(Undisputed) Respondent owns #9 and rents it to a tenant.

Trailer #11, made in 1972:



(Complainant) This trailer was sold in 2007 and the buyer/seller was not told it had to be moved out of the Park.

Trailer #14, made in 1959:



(Complainant) This trailer was sold after she moved in, during 2004 or 2005, and the seller/buyer were not told it had to be moved out of the Park.



Respondent owns it and rents it to a tenant.

- 5) Regarding Complainants' animals:
 - a) (Complainant) Respondent is still harassing her about her animals. When she disputed the pet fee for her service dog, Respondent knew that she also had five cats. Last summer, he had his manager ask her several times how many animals she had. He also asked her neighbor how many animals she has. She has the same number as before, but he won't leave her along about it.
 - b) (Respondent) He probably did ask his manager to see how many animals were in her trailer. He thought she had permission for two cats and no dogs. That's why he asked.
- 6) Regarding the alleged negative reference:
 - a) (Complainant) She applied to another mobile home park when she was planning on selling her trailer to Buyer. The prospective landlord denied her application, and told her that she got a bad reference from her landlord.
 - b) (Respondent) No one with authority from him gave Complainant a bad reference. It is possible that someone picked up the telephone and said something negative about her when a prospective landlord called.

V. ANALYSIS:

1) The Maine Human Rights Act requires the Commission to "conduct such preliminary investigation as it determines necessary to determine whether there are reasonable grounds to believe that unlawful discrimination has occurred." 5 M.R.S.A. § 4612(1)(B). The Commission interprets this standard to mean that there is at least an even chance of Complainant prevailing in a civil action.

- 2) The Maine Human Rights Act makes it unlawful for a person to discriminate against any individual because that individual has made a charge under the Act. 5 M.R.S.A. §§ 4553(10)(D), 4633(1).
- 3) Here, Complainant, alleges that Respondents, Respondent and Respondent, retaliated against her for filing a previous charge under the Act. Respondents denied the allegation of retaliation.
- 4) In order to establish a prima-facie case of retaliation, Complainant must show that she engaged in statutorily protected activity, she was the subject of a materially adverse action, and there was a causal link between the protected activity and the adverse action. *See Doyle v. Dep't of Human Servs.*, 2003 ME 61, ¶ 20, 824 A.2d 48, 56 (employment case); *Burlington Northern & Santa Fe Ry. v. White*, 126 S. Ct. 2405 (2006) (same). The term "materially adverse action" covers actions that are harmful to the point that they would dissuade a reasonable person from making or supporting a charge of discrimination. *See Burlington Northern*, 126 S. Ct. 2405. One method of proving the causal link is if the adverse action happens in "close proximity" to the protected conduct. *See Id*.
- 5) The prima-facie case creates a rebuttable presumption that Respondent retaliated against Complainant for engaging in statutorily protected activity. *See Wytrwal v. Saco Sch. Bd.*, 70 F.3d 165, 172 (1st Cir. 1995). Respondent must then produce some probative evidence to demonstrate a nondiscriminatory reason for the adverse action. *See Doyle*, 2003 ME 61, ¶ 20, 824 A.2d at 56. If Respondent makes that showing, Complainant must carry her overall burden of proving that there was, in fact, a causal connection between the protected activity and the adverse action. *See id.*
- 6) Complainant established a prima facie case by showing that she filed a complaint of discrimination against Respondents in December 2006 and that in April 2009, Respondents told her she would have to move her trailer out of the Park if she sold it. This was a materially adverse action and she lost the sale of the trailer to a bona fide buyer. The two events clearly did not happen in close proximity to one another. However, in this case, the causal link is provided by evidence that Respondents are still checking on the number of animals in Complainant' household, and her service animal was at the heart of the previous dispute.
- 7) Respondents stated that the reason Complainant was told to move her trailer is that Respondent has recently decided to replace older homes with newer homes.
- 8) At the final stage of analysis, Respondents' reasons are found to be untrue and a pretext for retaliation, with reasoning as follows:
 - a) Complainant' trailer is one of the two nicest trailers in the 15-lot Park.

- b) A number of older trailers have changed hands since Complainant has lived in the Park, including #4, #11 and #14, but Respondent has not asked any other buyer/seller to remove a trailer from the Park
- c) Respondent did not enforce a Park rule that requires a trailer to be removed from the Park when an owner dies. The trailer that was allowed to remain in the Park is not as nice as Complainant'.
- d) Respondent owns at least two trailers in the Park and rents them to tenants. If he wanted to replace older trailers with newer ones, he could start with the old trailers he owns.
- e) Respondent removed the trailer on Lot #9 because the owner abandoned it and he wanted to make the site available for rent.
- f) There is credible evidence that someone held himself or herself out to a prospective landlord as someone acting on behalf of Respondent, and gave a prospective landlord a bad reference about Complainant. There is no evidence that she has been a bad tenant. The most likely reason for the bad reference is that Complainant engaged in protected activity by bringing a housing complaint under the Maine Human Rights Act.

VI. RECOMMENDATION:

Patricia E. Ryan, Executive Director

For the reasons stated above, it is recommended that the Maine Human Rights Commission issue the following finding:

1)	There are Reasonable Grounds to believe that the Respondent, Respondent and Respondent, retaliated in housing against Complainant, and
2)	Conciliation should be attempted in accordance with 5 M.R.S.A. § 4612(3).

Barbara Lelli, Chief Investigator